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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA; and
JOHN DOES 1-5,

14 Defendants.

NO.

COMPLAINT FOR DAMAGES

15 **I. INTRODUCTION**

16 1.1 On February 9, 2015, a military forklift owned by the United States Army and
17 operated by Soldiers assigned to Joint Base Lewis McChord (JBLM), traveled westbound on
18 41st Division Drive just outside JBLM's Main Gate. The forklift was traveling with its boom
19 in an elevated position, too high to pass safely underneath the overpass bridge that supports
20 the northbound lanes of State Route/Interstate 5 (I-5). Despite having sufficient opportunity to
21 lower the boom or stop the forklift, the operator continued to drive the forklift underneath the
22 bridge, which caused the boom to crash into one of the bridge's support girders. The force of
23 the forklift slamming into the bridge required emergency inspection and repair work to ensure
24 the safety of the traveling public.

1 Plaintiff State of Washington, through its Department of Transportation (WSDOT or
 2 State) is the owner of the bridge that is the subject of this lawsuit. The State brings this action
 3 under the Federal Tort Claims Act (FTCA) to recover the substantial damages caused by the
 4 dangerous, negligent actions of the Defendants that caused the collision. In support of this
 5 action, the State alleges as follows:

6 **II. PARTIES**

7 2.1 Plaintiff is the State of Washington. It owns, operates, and maintains within its
 8 boundaries a highway system for the benefit of the traveling public, including I-5, 41st
 9 Division Drive, and the Overpass that are the subjects of this litigation.

10 2.2 Defendant, the United States of America (United States) is a body politic that,
 11 for purposes of this litigation, operates through its executive branch the Department of Defense
 12 (DOD) that oversees the Department of the Army (Army), a uniformed military service of the
 13 United States. Pursuant to the FTCA, the United States is charged with defending claims
 14 brought against executive departments, including the Army, as well as the Army's uniformed
 15 service members, employees, and agents. 28 U.S.C. §§ 2671-2680.

16 2.3 At all times mentioned herein, the United States was responsible for ensuring
 17 its service members, employees, and agents operated Army equipment both on and off Army
 18 installations in a reasonable, safe, and prudent manner, including on public highways and other
 19 rights of way.

20 2.4 At all times mentioned herein, the United States was responsible under the
 21 FTCA for the negligent acts or omissions of its service members, employees, and agents.

22 **III. JURISDICTION AND VENUE**

23 3.1 Pursuant to 28 U.S.C. § 1331 and the FTCA, 28 U.S.C. §§ 2671-2680, this
 24 Court has jurisdiction over the claims alleged against the United States.

3.2 This Court has jurisdiction over any non-FTCA claims alleged against John Does 1-5 pursuant to 28 U.S.C. § 1367(a) (supplemental jurisdiction).

3.3 Pursuant to 28 U.S.C. § 1402, venue is proper in the Western District of Washington because the acts, omissions, and damages alleged herein occurred in Pierce County, Washington.

3.4 Plaintiff filed a FTCA claim form on November 15, 2016. More than six months has elapsed since Plaintiff filed its FTCA claim form.

IV. FACTS

4.1 Plaintiff restates each and every claim, assertion, and allegation contained in paragraphs 1.1 through 3.3 of this Complaint as if fully set forth herein.

4.2 The State, through WSDOT, owns, operates, and maintains I-5 within its boundaries, as well as its supporting right of way.

4.3 The United States, through the DOD and the Army, owns, operates, and maintains JBLM, a military installation located in Pierce County.

4.4 I-5 passes alongside JBLM's boundaries in Pierce County, including at I-5 Milepost 120.

4.5 The State, through WSDOT, owns, operates, and maintains a traffic interchange at approximately Milepost 120 of I-5 (Exit 120). Exit 120 enables motorists to access JBLM and I-5's northbound and southbound lanes of travel.

4.6 At Exit 120, I-5 and its right of way divides JBLM into two areas; "JBLM North" (commonly referred to as "North Fort") on the northwestern side of I-5, and "JBLM Main" on the southeastern side of I-5.

1 4.7 The 41st Division Drive is a public way, owned, operated, and maintained by
2 the State through WSDOT within the limits of I-5's right of way. It is part of the Exit 120
3 interchange and connects JBLM Main and JBLM North.

4 4.8 I-5 passes over 41st Division Drive at Exit 120. The State, through WSDOT,
5 owns, operates, and maintains two overpass bridges that stretch over 41st Division Drive; one
6 for I-5's northbound lanes, one for I-5's southbound lanes. The overpass bridge that services
7 I-5's northbound lanes (the Overpass) is the subject of this lawsuit.

8 4.9 On February 9, 2015, a Soldier or Soldiers assigned to JBLM were operating
9 an All Terrain Lifter Army System (ATLAS) forklift in the westbound lanes of 41st Division
10 Drive. At all times relevant to this lawsuit, the ATLAS was owned, operated, and maintained
11 by the United States through the Army.

12 4.10 Upon information and belief, at all times material hereto, the Soldier or Soldiers
13 operating the ATLAS were on duty and acting within the scope of their service/employment
14 in the Army and had express or implied permission of the Army to operate the ATLAS.

15 4.11 The ATLAS has a height of approximately nine feet when its hydraulic "boom"
16 that lifts its fork carriages is in the lowered position. Its boom can lift loads in excess of 20 feet
17 above ground level.

18 4.12 The United States, through the Army, has strict training requirements for its
19 Soldiers, employees, and agents who operate Army equipment, including the ATLAS.

20 4.13 The Overpass has a maximum vertical clearance of 14 feet, 7 inches. Signs on
21 the Overpass visible to motorists traveling on 41st Division Drive indicate this maximum
22 vertical clearance.

23 4.14 The ATLAS approached the Overpass with its boom in an elevated position that
24 exceeded the Overpass's maximum vertical clearance.

1 4.15 The Soldier(s) and the Army had a responsibility to ensure the ATLAS operated
2 with its boom low enough to clear underneath the Overpass. The Soldier(s) and the Army failed
3 to do this, even though they knew or should have known that the boom would not fit underneath
4 the Overpass unless it was lowered.

5 4.16 The ATLAS struck the overpass on February 9, 2015.

6 4.17 The ATLAS's collision with the Overpass caused significant damage to one of
7 the Overpass's concrete bridge girders.

8 4.18 Shortly after the collision, Soldiers assigned to the 42nd Military Police (MP)
9 Brigade stationed on JBLM arrived at the scene of the collision and conducted an investigation.
10 The investigation determined that the ATLAS struck the Overpass because its boom exceeded
11 the Overpass's maximum vertical clearance.

12 4.19 The legal maximum height for loads in the State of Washington is 14 feet.
13 Vehicles or loads higher than 14 feet require a special permit from WSDOT. None of the
14 Defendants applied for or obtained a permit, even though they knew or should have known the
15 ATLAS constituted an oversized vehicle as it was being operated on February 9, 2015.

16 4.20 The Soldier(s) and the Army were required to take reasonable and necessary
17 steps to determine whether the ATLAS could safely pass under the Overpass with its boom in
18 the elevated position. They did not. Instead, the Soldier(s) drove the ATLAS toward the
19 Overpass, which they knew or should have known did not have sufficient vertical clearance to
20 accommodate the boom's elevated position.

21 4.21 Had the Soldier(s) acted reasonably, prudently, and safely by lowering the
22 boom before reaching the Overpass or planning an alternative route around the Overpass, the
23 February 9, 2015 collision would not have occurred.

1 4.22 Defendants each failed to investigate and ensure there was sufficient vertical
2 clearance under the Overpass to allow the ATLAS to safely pass underneath it without striking
3 and damaging the Overpass.

4 **V. CAUSE OF ACTION—NEGLIGENCE—RCW 46.44.110**

5 5.1 Plaintiff incorporates and reasserts each and every claim, assertion, and
6 allegation contained in paragraphs 1.1 through 4.22 of this Complaint as if fully set forth
7 herein.

8 5.2 Defendants had a duty to operate the ATLAS in a reasonable, safe, and prudent
9 manner. Defendants failed to do in at least the following ways:

10 5.2.1 Defendants failed to measure the height of the ATLAS's boom prior to
11 approaching the Overpass, which dangerously and needlessly increased the risk that
12 the boom would strike and damage the Overpass;

13 5.2.2 Defendants failed to make sure there was sufficient vertical clearance
14 on 41st Division Drive for the boom to safely pass underneath the Overpass without
15 striking it;

16 5.2.3 Defendant United States failed to adequately train and supervise its
17 Soldier(s) in the safe operation of the ATLAS on public rights of way and underneath
18 elevated structures, including, but not limited to, the importance of accurately
19 determining the height of the ATLAS's boom as it approached the Overpass;

20 5.2.4 Defendants failed to determine and follow a route capable of
21 accommodating the ATLAS with its boom in an elevated position;


22 5.2.5 Defendants failed to lower the ATLAS's boom to a lowered position
23 that could accommodate the Overpass's maximum vertical clearance; and,
24

1 6.1.3 For the State's costs and disbursements incurred herein.

2 6.1.4 For such other relief as this Court deems just and equitable.

3 DATED this 6th day of December 2018.

4 ROBERT W. FERGUSON
5 Attorney General

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